

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

Women's Interest Network

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This article reviews selected developments relating to women's rights during the year 2013.¹

I. CEDAW

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)² had 187 parties as of the end of 2013. The United States signed CEDAW in July 1980, but it has still not ratified it. The only other nation to have signed and not yet ratified CEDAW is the Republic of Palau, which signed CEDAW in September 2011.³ There was hope in early 2013 of movement toward U.S. ratification of CEDAW.⁴

II. Protecting Women from Violence after Natural Disasters

Increased attention was directed in 2013 toward the need to protect women and girls from sexual assault following natural disasters.⁵ An international conference was held in London in December 2013 (shortly after Typhoon Hainan hit the Philippines) to protect women from rape and to help them deliver babies in the aftermath of natural disasters.⁶ Thirteen governments, including the United States, reportedly "agreed to assume that women and girls are in greater danger of violence after natural disasters than men and

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1. For developments during 2012, see Olufunmi Oluyede & Mark E. Wojcik, *Women's Interest Network*, 47 INT'L L. 323 (2013).

2. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Dec. 18, 2979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

3. *Status of the Convention on the Elimination of All Forms of Discrimination Against Women*, UNITED NATIONS TREATY COLLECTION (Mar. 23, 2014, 5:01 AM), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en.

4. See, e.g., Thalif Deen, *New Push for U.S. to Ratify Major Women's Treaty*, INTER PRESS SERVICE (Jan. 8, 2013), <http://www.ipsnews.net/2013/01/new-push-for-u-s-to-ratify-major-womens-treaty/>.

5. Press Release, U.K. Dep't for Int'l Dev., Greening: Girls and Women Must Be Kept Safe in Emergencies (Nov. 13, 2013), *available at* <https://www.gov.uk/government/news/greening-girls-and-women-must-be-kept-safe-in-emergencies>.

6. See Sarah Wheaton, *Effort to Help Filipino Women Falter*, U.N. Says, N.Y. TIMES, Dec. 11, 2013, at A4.

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boys, and that organizations should act quickly to prevent and treat [the danger of violence] rather than waiting for confirmation that it has occurred.”⁷ The assumption marks a new development that will hopefully better protect women and girls after natural disasters as well as during times of armed conflict.

III. Women Using Social Media to Document Driving in Saudi Arabia

The Kingdom of Saudi Arabia continues to ban women from driving. Saudi police officers continue to stop women who defy the ban, but no women appear to have been jailed for driving since 2011.⁸ Authorities have also detained at least one man who wrote in support of lifting the ban against women driving in Saudi Arabia.⁹ Although Saudi women have been demanding the right to drive for more than twenty-two years, there appears to be little movement to lift the driving ban on women.¹⁰ Women activists have now started to film themselves driving in Riyadh and “documenting their confrontations with law enforcement on social media to increase pressure on the conservative monarchy and keep the issue in the public eye.”¹¹ A national day of driving defiance was held on December 28, 2013.¹² The use of social media to promote change in the law is seen as a positive development, even if a change in the law is not presently on the horizon.

IV. Abortion: The Legal Landscape Forty Years After *Roe v. Wade*

The year 2013 marks the fortieth anniversary of the U.S. Supreme Court’s landmark decision in *Roe v. Wade*,¹³ which struck down laws that criminalized abortion at any stage, except only in life-saving circumstances. In the opinion, Justice Blackmun acknowledged the “sensitive and emotional nature of the abortion controversy” and the “vigorous opposing views.”¹⁴ Forty years later, the topic is still highly charged and sensitive, and the debates still vigorous. In *Roe v. Wade*, the Supreme Court ruled that abortion decisions during the first trimester would be left to the mother and her physician; after the first trimester, regulations to protect maternal health were permissible; after that stage, and “subsequent to viability,” a state could prohibit abortion, except where necessary to preserve the life or health of the mother.¹⁵ Since *Roe v. Wade*, abortion opponents strive to

7. *Id.* Waiting for confirmation of violence against women and girls in disaster areas may be particularly problematic because of the difficulties of reporting such incidents during times of natural disaster. For example, in Tacloban, the hardest-hit city in the Philippines after Typhoon Haiyan, the city administrator said that “the police had been unable to confirm rumors of rapes and sexual assaults in the days and weeks following the typhoon.” *Id.* Relief officials working in the city dismissed the idea that there was no threat to women, noting that only two of 1,300 police officers were women. *Id.*

8. See Ahmed Al Omran & Ellen Knickmeyer, *Saudi Women Set New Driving Ban Protest*, WALL ST. J., Dec. 21, 2013, at A11, available at <http://online.wsj.com/news/articles/SB20001424052702304773104579265742769606208>.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Roe v. Wade*, 410 U.S. 113 (1973).

14. *Id.* at 116.

15. *Id.* at 164–65.

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introduce limits on abortion, while those on the other side argue for a more protective view of a woman's privacy rights.

A. TEXAS

Texas was in the spotlight in 2013 for its highly visible battle over abortion. In July, Texas Governor Rick Perry signed into law H.B. 2,¹⁶ which contained some of the toughest restrictions on abortion since *Roe v. Wade*. The law bans abortions after 20 weeks, requires clinics to meet the same standards as hospital surgical centers, and requires doctors to have admitting privileges with a hospital within thirty miles of the facility. The law also contains the same Food and Drug Administration (FDA) protocol restriction on medical abortions that was struck down by the Oklahoma Supreme Court.¹⁷

The passage of the Texas law was not as easy as Governor Perry likely had hoped it would be. National attention was drawn to the law when Wendy Davis, Texas State Senator from Fort Worth, spoke for nearly eleven hours in a filibuster attempt that, although ending just shy of midnight, did delay the eventual passage of the bill.¹⁸

But the law did pass, and legal challenges began almost immediately. In October 2013, a federal district court judge, Judge Lee Yeakel, enjoined the requirement that doctors have admitting privileges, finding that provision to have no rational relationship to the state's interest in regulating abortion. Judge Yeakel also enjoined the restriction on medical abortions, saying that decision should be between the doctor and patient.¹⁹

The U.S. Court of Appeals for the Fifth Circuit issued a stay on most of Judge Yeakel's injunction.²⁰ The court decided that the law requiring admitting privileges could take effect; the court, however, agreed to continue an injunction on certain medical abortions for health reasons but limited the breadth of that injunction.²¹ The court also granted the state's request for expedited briefing and oral argument on the merits.²²

The American Civil Liberties Union (ACLU) filed an emergency request with the U.S. Supreme Court to temporarily block the restriction regarding admitting privileges from taking effect, but the Supreme Court denied that application.²³ According to the ACLU's website, the case will continue in the Fifth Circuit Court of Appeals, where the merits will be heard in 2014.²⁴

16. Act of July 12, 2013, ch. 1, §§ 1–12, 2013 Tex. Sess. Law Serv. 4795–802 (West 2013) (to be codified at TEX. HEALTH & SAFETY CODE ANN. §§ 171.0031, 171.041–048, 171.061–064, amending § 245.010.011; TEX. OCC. CODE ANN. amending §§ 164.052, 164.055).

17. See *infra* notes 26–28 and accompanying text.

18. Elise Hu, *The Wendy Davis Rocket Ride*, NAT'L PUB. RADIO (June 26, 2013, 6:19 PM), <http://www.npr.org/blogs/itsallpolitics/2013/06/26/195967502/the-wendy-davis-rocket-ride-humble-beginnings-bio>.

19. *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 951 F. Supp. 2d 891, 900 (W.D. Tex. 2013), *granting stay*, 734 F.3d 406 (5th Cir. 2013), *denying mtn to vacate stay*, 134 S. Ct. 506 (2013).

20. *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406 (5th Cir. 2013), *denying mtn to vacate stay*, 134 S. Ct. 506 (2013).

21. *Id.* at 411, 419.

22. *Id.* at 419.

23. See *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 134 S. Ct. 506, 506 (2013).

24. *Planned Parenthood v. Abbott*, AM. CIV. LIBERTIES UNION (Dec. 19, 2013), <https://www.aclu.org/reproductive-freedom/planned-parenthood-v-abbott>.

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B. OKLAHOMA

Oklahoma also passed two very restrictive laws, both of which made their way to the U.S. Supreme Court.²⁵ One law restricted abortions through medication rather than through surgery.²⁶ The law required that drugs used to induce abortion be administered according to the protocol approved by the FDA, but the language of the statute would prohibit even common off-label uses and effectively ban all medication abortions.²⁷ The Oklahoma Supreme Court struck down the law, finding it a facially unconstitutional restriction on abortion under the U.S. Supreme Court's prior holding in *Planned Parenthood v. Casey*.²⁸ The state filed a petition for certiorari, which was initially granted. But the U.S. Supreme Court, in a *per curiam* opinion dated November 4, 2013, dismissed the petition as improvidently granted,²⁹ thus allowing the opinion of the Oklahoma Supreme Court to stand.

The other Oklahoma law, known as the Oklahoma Ultrasound Act,³⁰ required the performance, display, and explanation of pre-abortion ultrasounds to any woman seeking an abortion. In another *per curiam* opinion, the Oklahoma Supreme Court also struck down this law, finding it facially unconstitutional.³¹ The state also challenged this holding, but, on November 12, 2013, the U.S. Supreme Court denied the petition for review,³² so this decision of the Oklahoma Supreme Court also stands.

C. KANSAS, ARKANSAS, AND NORTH DAKOTA

Despite the attention given to Texas and Oklahoma, primarily because challenges to those states' laws seemed poised for potential U.S. Supreme Court review, those were not the only states to pass broad new restrictions on abortion in 2013. Kansas passed a law that declares that human life begins at conception, and among the law's many provisions are those prohibiting gender-based abortions and the use of tax breaks or incentives to support abortion or facilities where abortions are performed. It also prohibits anyone working or volunteering for an abortion provider from being involved in public instruction on human sexuality or sexually transmitted diseases, and it requires providers to post or inform women of various types of information, such as printed material about the development of the fetus.³³ Legal challenges to Kansas's new law continue,³⁴ and even when those cases end or settle, legal battles over abortion in Kansas are not likely to cease.

25. See *infra* notes 26 and 30.

26. H.B. 1970, 53rd Leg., 1st Reg. Sess. (Okla. 2011).

27. *Cline v. Okla. Coal. for Reprod. Justice*, 313 P.3d 253 (Okla. 2013).

28. See *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992); see *Oklahoma Coal. for Reprod. Justice v. Cline*, 292 P.3d 27, 28 (Okla. 2012).

29. *Cline v. Okla. Coal. for Reprod. Justice*, 134 S. Ct. 550 (2013).

30. H.B. 2780, 52d Leg., 2d Reg. Sess. (Okla. 2010).

31. *Nova Health Sys. v. Pruitt*, 292 P.3d 28 (Okla. 2012) (*per curiam*), *cert. denied*, 134 S. Ct. 617 (2013).

32. *Pruitt v. Nova Health Sys.*, 134 S. Ct. 617 (2013).

33. H.B. 2253, 2013 Sess. (Kan. 2013).

34. John Hanna, *Shawnee County District Judge Rejects Challenge to Anti-Abortion Law*, TOPEKA CAPITAL J. (Nov. 1, 2013, 2:47 PM), <http://cjonline.com/news/2013-11-01/shawnee-county-district-judge-rejects-challenge-anti-abortion-law>.

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Arkansas sought to implement a law that would have banned abortions as early as twelve weeks.³⁵ But the ACLU and the Center for Reproductive Rights challenged this law,³⁶ and U.S. District Court Judge Susan Webber granted their request to temporarily block the law from going into effect while legal challenges proceed.³⁷

Not to be outdone, North Dakota passed H.B. 1456 in 2013, which would ban abortions after a fetal heartbeat can be detected, except in cases of medical emergency.³⁸ The law, if allowed to be implemented, would potentially block abortions as early as six weeks into the pregnancy and would be the most restrictive law in the United States. This was not the only abortion restriction passed by North Dakota in 2013,³⁹ but it is arguably the most controversial. U.S. District Judge Daniel L. Hovland temporarily enjoined that restriction in July 2013.⁴⁰

Forty years after *Roe v. Wade*, U.S. state legislatures are still attempting to delineate the constitutional limits of abortion rights. Whether the viability line will continue to be drawn earlier into the pregnancy—perhaps even as early as six or twelve weeks—and whether a state's rights will remain compelling at that line remains to be seen. What is certain is that legal challenges to those laws will continue.

D. U.S. ABORTION LAWS GENERALLY IN 2013

According to the Guttmacher Institute, forty-one states have gestational limits on abortion, except when necessary to protect a woman's life or health.⁴¹ The most common limit is "viability," which was famously described in *Roe v. Wade* as the point at which the fetus is "potentially able to live outside the mother's womb, albeit with artificial aid."⁴² Viability, at least at that time, was usually placed at twenty-eight weeks but could be as early as twenty-four weeks.⁴³

Viability is a moving target, as pointed out by Justice Sandra Day O'Connor in a dissenting opinion in *Akron v. Akron Center for Reproductive Health*, because improvements in technology bring potential fetal viability earlier in pregnancy.⁴⁴ That limit appears to be the most legislated and litigated aspect of abortion laws to date. In March 2013, the *Washington Post* published an interactive map that indicates the stage at which each state places

35. Ark. Human Heartbeat Protection Act, No. 301, 2013 Ark. Acts __ (codified as amended at ARK. CODE ANN. §§ 20-16-1301 to 1307 (2013)).

36. Complaint, *Edwards v. Beck*, 946 F. Supp. 2d 843 (No. 4:13CV00224 SWW) (E.D. Ark. 2013).

37. Jennifer Barrett Reed & Andrew Harris, *Arkansas Law Limiting Abortions at 12th Week Is Blocked*, BLOOMBERG (May 17, 2013, 11:01 PM), <http://www.bloomberg.com/news/2013-05-17/arkansas-law-limiting-abortion-at-12th-week-is-blocked.html>.

38. S.B. 2368, 63d Leg. Assemb., Reg. Sess. (N.D. 2013) (restricting abortion after twenty weeks).

39. See H.B. 1305, 63d Leg. Assemb., Reg. Sess. (N.D. 2013) (restricting abortions based on sex or genetic abnormalities).

40. See Erik Eckholm, *Abortion Restrictions Go Too Far, Judge Rules*, N.Y. TIMES, July 23, 2013, at A10.

41. GUTTMACHER INST., STATE POLICIES IN BRIEF: AN OVERVIEW OF ABORTION LAWS (Feb. 1, 2014), available at http://www.guttmacher.org/statecenter/spibs/spib_OAL.pdf [hereinafter OVERVIEW OF ABORTION LAWS].

42. *Roe v. Wade*, 410 U.S. at 160.

43. *Id.*

44. *Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. 416, 456–58 (1983).

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limits (if any) on abortion.⁴⁵ North Dakota's fetal heartbeat law, which places limits as early as six weeks into the pregnancy, was the most striking attempt to move back the viability timetable, but it has so far not been successful.⁴⁶ Twelve states light up when twenty weeks is selected, indicating that those states have bans at or prior to twenty weeks; but legal challenges in three of those states—Idaho (twenty weeks), Arizona (eighteen weeks), and Georgia (twenty weeks)—were keeping those laws from being implemented. Most of the states light up at post-viability, yet there are several—including Oregon, Nevada, Alaska, South Dakota, Colorado, New Mexico, Missouri, Mississippi, West Virginia, New Jersey, Vermont, New Hampshire, and Washington D.C.—that had no bans tied to viability or fetal age limits at the time of the article.⁴⁷

Another common area of abortion legislation relates to counseling that a woman is required to have prior to an abortion procedure. The Guttmacher Institute reports that thirty-five states require women to be given some sort of counseling prior to the procedure and twenty-six states require a waiting period, typically twenty-four hours, between the counseling and the procedure.⁴⁸ Additionally,

[seventeen] states mandate that women be given counseling before an abortion that includes information on at least one of the following: the purported link between abortion and breast cancer ([five] states), the ability of a fetus to feel pain ([twelve] states) or long-term mental health consequences for the woman ([eight] states).⁴⁹

E. ABORTION GLOBALLY

According to the United Nations, 97 percent of countries in the world allow abortion to save a woman's life, 68 percent to preserve the health of the woman, 65 percent to preserve a woman's mental health, and 51 percent in cases of rape and incest.⁵⁰ Only 30 percent allow abortion "on request."

The Holy See, Malta, the Dominican Republic, El Salvador, Nicaragua, and Chile all ban abortion in any circumstance.⁵¹ In several other countries—including Madagascar, Malawi, Mauritius, Somalia, Angola, the Central African Republic, Congo, the Democratic Republic of Congo, Gabon, São Tomé and Príncipe, Guinea-Bissau, Mali, Mauritania, Iran, the Philippines, Syria, Andorra, San Marino, Monaco, Haiti, and Antigua and Barbuda—there are no laws allowing abortion to save a woman's life, but general criminal law principles in those countries presumably allow for it as a necessity.⁵²

45. *Abortion Laws by State*, WASH. POST (Mar. 28, 2013), <http://www.washingtonpost.com/wp-srv/special/politics/us-abortion-map/>.

46. The map pre-dates the legal challenges that have since been mounted against the North Dakota law. *Id.*

47. *Id.*

48. GUTTMACHER INST., STATE POLICIES IN BRIEF: COUNSELING AND WAITING PERIODS FOR ABORTION (Feb. 1, 2014), *available at* http://www.guttmacher.org/statecenter/spibs/spib_MWPA.pdf.

49. OVERVIEW OF ABORTION LAWS, *supra* note 41.

50. N. DEP'T OF ECON. & SOC. AFFAIRS, POPULATION DIV., WORLD ABORTION POLICIES 2013, U.N. Doc. ST/ESA/SER.A/329, U.N. Sales No. E.13.XIII.4 (2013) (containing statistics from 2011).

51. *Id.*

52. *Id.*

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The Center for Reproductive Rights has published an interactive map that provides a colorful overview of abortion laws globally in 2013.⁵³ Areas in green, which includes much, but not all, of North America, Europe, and Northern Asia, provide the least restrictions on permitted reasons for abortion, while wide swaths of Africa and South America are in red or orange, indicating strict restrictions on abortion.

Globally, the limitations on abortion vary widely. But most countries allow for abortion, at least in cases where the mother's life is in danger, and only six countries ban abortion entirely. Attitudes surrounding abortion, and laws reflecting those attitudes, will likely continue to evolve for the next forty years, and perhaps beyond.

53. Ctr. for Reprod. Rights, *The World's Abortion Laws 2014*, WORLD ABORTION L., <http://www.worldabortionlaws.com/map/> (last visited Mar. 23, 2014).

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Cross-Border Real Estate Practice

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This article reviews selected developments in the area of cross-border real estate practice during 2013.¹

I. Introduction

Many countries have experienced legislative changes since the worldwide 2008 financial crisis. European Union countries have enacted policies to promote investments and tourism.² These countries are not the only nations trying to recover from the crisis, as countries including Brazil,³ Russia,⁴ Mexico,⁵ and the Dominican Republic⁶ have also realized the importance of attracting investment. Brazil and Russia are hosting some of the

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1. For developments during 2012, see Laura Lavia Haidempergher and Andrey Selytin, *Cross-Border Real Estate Practice*, 47 INT'L LAW. 327 (2013). For developments during 2011, see Anders Forkman et al., *Cross-Border Real Estate Practice*, 46 INT'L LAW. 321 (2012).

2. See generally *EU Policy - Background*, EUR. COMM'N, <http://ec.europa.eu/enterprise/sectors/tourism/background/#h2-1> (last visited Mar. 11, 2014).

3. See generally Enrique R. Carrasco & Sean Williams, *Emerging Economies After the Global Financial Crisis: The Case of Brazil*, 33 NW. J. INT'L L. & BUS. 81, 82 (2012).

4. See generally *Tourism in Russia Contributes More to GDP Than Automotive Manufacturing*, WORLD TRAVEL AND TOURISM COUNCIL (Sept. 19, 2012), <http://www.wttc.org/news-media/news-archive/2012/tourism-russia-contributes-more-gdp-automotive-manufacturing/>.

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world's most treasured sports events, while Mexico and the Dominican Republic continue to build new hotels, resorts, and mixed-use tourism developments to attract second-home buyers, baby-boomers, and retirees.⁷

II. Property Ownership in Mexico

On April 23, 2013, the Mexican House of Representatives (*Camara de Diputados*) passed a bill to amend Article 27, section I of the Mexican Constitution⁸ to allow foreigners to own direct, fee simple title to real property near Mexico's beaches and borders.⁹ The bill is now before the Senate and is expected to become law in 2014.

Currently, foreigners who have purchased real property—including residential lots, second homes, and condominiums—in the restricted zone are using banks as trustees that hold title in trust for the benefit of the foreigner; that is, the bank holds legal title to the land, but the foreigner holds beneficial title, including use, enjoyment, and conveyance rights. This trust (in Spanish, *fideicomiso*)¹⁰ structure results in foreigners having to go through an expensive one- to two-month closing process to acquire a lot or residence in the "restricted zone." The constitutional amendment will allow foreigners to purchase direct title to real property in the restricted zone, provided, however, that it is solely for residential purposes.¹¹ The amendment will surely result in a less-expensive and faster closing process and will give foreigners the comfort that their property rights are even

5. See generally Enrique Peña Nieto, *Mexico Will Be A World Tourist Power*, MEXICO PRESIDENCIA DE LA REPÚBLICA (Feb. 14, 2013), <http://en.presidencia.gob.mx/articles-press/mexico-will-be-a-world-tourist-power-enrique-pena-nieto/>.

6. See generally *Dominican Republic Sustainable Tourism Alliance*, SOLIMAR INT'L, <http://www.solimarinternational.com/tourism-projects/dominican-republic> (last visited Mar. 11, 2014).

7. See Laurence Iliff, *Mexico Weighs Opening Up Wider to Foreign Property Buyers*, WALL ST. J. (July 9, 2013, 7:03 PM), <http://online.wsj.com/news/articles/SB10001424127887324867904578593683203485660>; see also *A New Dawn for Dominican Republic's Real Estate Market*, DRI REAL ESTATE (Apr. 13, 2009), <http://dri1.com/realstate/news/a-new-dawn-for-the-dominican-republic/>.

8. Today, Art. 27, section I reads, "[o]nly Mexicans by birth or naturalization and Mexican companies have the right to acquire ownership of lands, waters, and that appurtenant thereto, or to obtain concessions for the exploitation of mines or of waters. The State may grant the same right to foreigners, provided they agree before the Ministry of Foreign Relations to consider themselves as nationals in respect to such property, and to agree not to invoke the protection of their home governments in matters relating thereto; under penalty, in case of noncompliance, of forfeiture to the Nation of the property acquired. Under no circumstances may foreigners acquire direct ownership of lands or waters within a zone of one hundred kilometers of the border and of fifty kilometers of the sea shores of the country." Constitución Política de los Estados Unidos Mexicanos [C.P.] (Political Constitution of the United Mexican States), *as amended*, Diario Oficial de la Federación [DO], 9 de Noviembre de 1940 (Mex.).

9. Comisión de Puntos Constitucionales [Commission on Constitutional Matters], Dictamen en Sentido Positivo a la Iniciativa con Proyecto de Decreto por el que se Reforma el Artículo 27 de la Constitución Política de los Estados Unidos Mexicanos, en Materia de Propiedad para Extranjeros [Positive Opinion of the Initiative Draft Decree Amending Article 27 of the Political Constitution of the United Mexican States, Responsible for Property of Foreigners], Número 3755-IV, Gaceta Parlamentaria, 23 de Abril de 2013 (Mex.), available at <http://gaceta.diputados.gob.mx/PDF/62/2013/abr/20130423-IV.pdf>.

10. The trust is a three-party contract through which the seller (*fideicomitente*/trustor) irrevocably transfers title to real property to a Mexican bank (*fiduciario*/trustee) so that the foreign citizen (*fideicomisario*/beneficiary) can use and enjoy the property and dispose of it if and when desired.

11. Foreigners who currently own land through a trust would be able to terminate their current trust and transfer title to themselves directly.

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more secure than under the existing trust structure. But foreigners who purchase land with a commercial, business, industrial, agricultural, or any type of direct or indirect economic purpose are still required to take title via a trust or a wholly owned Mexican subsidiary.¹²

If the bill passes the Senate and is then approved by a majority of Mexican state legislatures, it is foreseen that each bank will determine the cost and process for terminating the trusts so that title may be transferred to the individual. Many owners will likely elect to keep their property in the trust for the time being, as the systems are put in place or in the event that they plan on selling soon anyway. Some may even elect to keep their trust indefinitely, inasmuch as (a) it does afford estate planning benefits (no Mexican will is required to pass property to heirs because the trust does it for you) and (b) makes it more difficult for creditors to attach the property.

The proposed reform, although seen by the Mexican government as an incentive for foreign investment, is also a way to prevent the practice in which foreigners acquire land intended for residential purposes, but then use it for economic gain. If the amendment becomes law, Congress and the Executive will establish the secondary laws and regulations. These will shed further light on the process and restrictions, including a provision that will likely stipulate that if a foreigner acquires direct title to property for residential purposes but then uses it for commercial purposes (e.g., a hotel or restaurant), the property could be subject to forfeiture to the Mexican government.

III. The Economic Crisis and Real Estate Markets in Europe

This section examines the effect of the Euro Crisis on real estate markets and the legal steps taken in several European countries (Greece, Italy, Poland, Portugal, and Spain).

A. GREECE

According to the Annual Report of the Governor of the Bank of Greece, housing prices in 2010 fell by 6.7 percent, while for the year 2011 they fell by 7.5 percent.¹³ Decreased demand and general cautiousness when it comes to new investments is indicative of this trend.¹⁴ Similarly, rent prices fall and many rental agreements are being renegotiated due to massive supply.¹⁵

The Greek real estate market has a high percentage of citizens who own homes and who suffered adverse economic impact from the U.S. and European financial crises.¹⁶ The market has a heavy burden of surcharges and tax measures introduced in the context of the new economic policy adopted to fight the crisis and high transactional costs.¹⁷ In

12. The Mexican subsidiary/corporation may be 100 percent owned and managed by foreigners.

13. BANK OF GREECE, GOVERNOR'S ANNUAL REPORT 2011 (Apr. 2012), *available at* http://www.bankof-greece.gr/BogDocumentEn/Governor's%20Annual%20Report%202011_April%202012_Chapter%20V_Section%202.pdf.

14. *See generally id.*

15. *Id.*

16. *See generally* Lalaine C. Delmendo, *Greek House Price Falls Continue*, GLOBAL PROP. GUIDE (Aug. 12, 2013), <http://www.globalpropertyguide.com/Europe/Greece/Price-History> (providing statistical analysis of the housing market and policy to counteract the crisis).

17. *Id.*

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addition, the complete lack of bank financing due to lack of available funds and the slow response of supply to demand affects the market.¹⁸

The future prospects of the Greek real estate market directly depend on the stabilization of the banking system, improved liquidity, the recovery of the national economy, and rising per capita income. To speed up recovery, first the financing of the economy by the banks must resume and needed corrective legal measures must be taken to facilitate investments in the real estate market, especially by foreigners whose investments would also significantly boost development.¹⁹

Some progress can be seen. The most important example is the completion of the national cadastral survey, a project that aims to create the National Cadastre. The National Cadastre is an integral and continuously updated information system that records the legal, technical, and other data about real estate rights, backed by the public sector. Its completion will contribute significantly to ensure the publicity and security of real estate transactions.²⁰

B. ITALY

The Italian real estate market grew enormously in the beginning of this century, but the spread of the American financial and real estate market crisis in late 2007 caused the volume of investments in Italy to drastically decline, resulting in the critical situation faced today. The uncertainty of the recovery of the Italian economy caused the Italian Parliament to approve, in late 2011, new laws aimed to liberalize the Italian real estate market and attract new investments.²¹

The new laws introduced important changes for the real estate market. For instance, the process for obtaining a building permit has been simplified by the new rule of implied consent.²² That is, a building permit application is deemed granted if the competent au-

18. *Id.*

19. See generally BANK OF GREECE, GOVERNOR'S ANNUAL REPORT 2012 (Mar. 2012), available at http://www.bankofgreece.gr/BogDocumentEn/Monetary_policy_2011-%202012%20_March%202012_Chapter%20III_Section_1_2_.pdf.

20. See *National Cadastre Property Registration*, HELLENIC PROP. FED'N, <http://www.pomida.gr/english/special/cadastre.html> (last visited Mar. 11, 2014).

21. On December 22, 2011, the Italian Parliament approved new economic measures, dubbed the "Save Italy" Act, proposed by the new Italian government led by Prime Minister Mario Monti. Law no. 214/2011 was published in the country's official gazette. Legge 27 dicembre 2011, n. 214 (It.), available at <http://www.aitecweb.com/Portals/0/pubnoaut/varie/Legge%2022%20dicembre%202011,%20n.%20214.pdf>. The Save Italy Act aims to lower the public debt, balance the national budget, reduce tax evasion, and promote economic growth by means of measures aimed at kick-starting the economy, while also raising revenues. The measures introduced include a potential increase of Italian VAT by 2 percent starting from September 2012. *Id.*; see also KPMG, FLASH INTERNATIONAL EXECUTIVE ALERT (Jan. 10, 2012), available at <http://www.kpmg.com/US/en/IssuesAndInsights/ArticlesPublications/flash-international-executive-alert/Documents/flash-international-executive-alert-2012-012-jan.pdf>; see also ALESSANDRO STOPPA, ALESSIO GIAMMARINO & COSIMO PENNETTA, PAUL HASTINGS, AMENDMENTS TO ITALIAN LEGISLATION GOVERNING REAL ESTATE INVESTMENT FUNDS (Aug. 2010), available at <http://www.paulhastings.com/assets/publications/1702.pdf>.

22. See POLYINVEST, LEVELS OF TERRITORIAL PLANNING - VENETO REGION, available at http://www.polyinvest.eu/assets/content/uploads/doc/administrative_procedures_8_1.pdf (last visited Mar. 11, 2014) (citing 6 giugno 2001, n. 380 (It.)); see also Gianmario Palliggiano, *L'attività Edilizia: dal Permesso di Costruire alla Denuncia di Inizio di Attività. Profili Sostanziali e Processuali* [(magistrato TAR SL'attività edilizia : dal

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thority does not issue a final resolution within thirty days following the date of the first preliminary decision.²³ In contracts, in the specific cases of environmental, cultural, and landscape constraints, the silence of the competent authority is deemed a denial of the building permit.²⁴

The new law has also reduced the number of construction works for which construction must wait thirty days for approval of a declaration before the competent authority (*denuncia e dichiarazione di inizio attività* or *DLA*). A simpler proceeding has been introduced, under which specific “minor” construction works can be carried out immediately after the filing of a simple communication (*segnalazione di inizio attività* or *SCIA*), without waiting for the thirty days for the authority to respond. In addition, the new law provides that a person who claims damages resulting from construction works may sue for the interruption of the works only if the applicable administrative agency fails to act within thirty days from the filing of the request by the aggrieved party.²⁵

The effect of measures enacted by the Italian Parliament to assist developers should be seen in the coming year, but the following factors should help improve the real estate market in Italy: (a) opportunities in the retail market well known to foreign investors, (b) the sale of publicly-owned properties to private investors, and (c) real estate development in the tourist sector.

C. POLAND

Since the financial crisis, Poland has fared better than most EU members. With a budget surplus and robust GDP growth, it was the only “green island” in Europe in 2009. According to Eurostat, Poland’s real GDP growth in 2011 was 4.3 percent—one of the highest in Europe.²⁶ The reasons are likely due to its flexible economy, limited indebtedness, large flow of EU funds, limited dependence on exports, extra-domestic demand, flexible exchange rate, diverse economy, and investment in the real estate market based on fundamentals rather than on speculation.²⁷ The infrastructure investment to co-host the 2012 European Football Championships was also a likely contributing factor.

Poland is not part of the Eurozone.²⁸ The flexible exchange rate of Poland’s currency, the zloty, likely allowed Poland to navigate around the crisis and create opportunities for

permesso di costruire alla denuncia di inizio di attività Construction Activity: The Building Permit to the Notice of Commencement of Business. Profili sostanziali e processuali () Substantive and Procedural*], LA GIUSTIZIA AMMINISTRATIVA, http://www.giustizia-amministrativa.it/documentazione/studi_contributi/2010_1_Paliggiano_Permesso_e_DIA.htm (last visited Mar. 11, 2014).

23. See POLYINVEST, DEVELOPMENT OF TRANSNATIONAL SYNERGIES FOR SUSTAINABLE GROWTH AREAS AREA OF INTERVENTION: TACKLE CRUCIAL PROBLEMS AFFECTING METROPOLITAN AREAS AND REGIONAL SYSTEMS OF SETTLEMENTS, *available at* http://www.polyinvest.eu/assets/content/uploads/doc/administrative_procedures_9_1.pdf (last visited Feb. 11, 2014) (citing 6 giugno 2001, n. 380 (It.)).

24. *Id.*

25. See author for copy of resources.

26. EUR. COMM’N, EUROPEAN ECONOMIC FORECAST, SPRING 2012: POLAND, *available at* http://ec.europa.eu/economy_finance/eu/forecasts/2012_spring/pl_en.pdf (last visited Mar. 11, 2014).

27. See generally *id.*

28. Lluiza Oleszczuk, *Poland’s Accession To Euro Zone Increasingly Uncertain*, FORBES (July 29, 2013, 11:47 AM), <http://www.forbes.com/sites/greatspeculations/2013/07/29/polands-accession-to-euro-zone-increasingly-uncertain/>.

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real estate investors.²⁹ The downside was that the banks and borrowers are exposed to exchange risks. Although Poland offers real estate investors high returns, the instability in the Eurozone will probably cause delays in new investments, construction, and occupation.³⁰

D. PORTUGAL

Portugal's depressed real estate market will likely continue due to the Euro Crisis, declining GDP, high unemployment, large public and private debt, a banking liquidity crisis, and the austerity measures implemented under the EU and International Money Fund (IMF) bailout agreement.³¹

The number of dwellings completed in 2010 fell by 13.2 percent, as vacancy rates remain high (735,000 vacancies in 2011).³² Office take-up levels in Lisbon ended 2011 with the lowest value recorded in 10 years.³³ Nonetheless, there has been a surge in interest from overseas buyers, and the commercial and residential leasing market is poised to benefit from an anemic sales market.³⁴

Likewise, from a practitioner's and client business perspective, it appears that the new Real Estate Investment Funds (REITs) have been investing in converting foreclosed properties into rentals. In addition, to further aid in the market's recovery, the Memorandum of Understanding reached between Portugal, EU, and IMF to receive €26 billion in bailout loans, requires the Portuguese government to review the housing market and implement changes to achieve certain objectives. Among those objectives are to (a) improve access to housing, (b) foster labor mobility, (c) improve the quality and use of the housing stock, and (d) reduce the incentives for households to build up debt.³⁵

The economy presents some unique opportunities for real estate business. The decrease in prices creates favorable conditions for long-term investment by overseas investors. To improve their capital levels, Portuguese banks must dispose of distressed assets at discount prices. New laws also make it more appealing for investors to purchase residential apartments for renting. Amendments to the lease law may help some problems with

29. Patryk Wasilewski, *Polish Zloty Secure, Economy Safe and Sound Says Central Bank*, WALL ST. J. (Jan. 24, 2014, 8:15 AM), <http://online.wsj.com/news/articles/SB10001424052702304632204579340341802373308>.

30. See generally Ansgar Hubertus Belke & Daniel Gros, *Instability of the Eurozone? On Monetary Policy, House Prices and Labor Market Reforms* (Institute for the Study of Labor (IZA), Discussion Paper No. 2547, 2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=958708; see also Kevin Peachey, *Eurozone Crisis Explained*, BBC (Jun. 18, 2012, 5:53 AM), <http://www.bbc.co.uk/news/business-18287476>.

31. See generally Gavin Hewitt, *Eurozone Crisis: Why Portugal Matters*, BBC (Jul. 3, 2013, 7:50 AM), <http://www.bbc.co.uk/news/world-europe-23162786>.

32. CAN. WITHOUT PROPERTY, BRITISH COLUMBIA POVERTY PROGRESS PROFILE, (2013), available at <http://www.cwp-csp.ca/wp-content/uploads/2012/05/BC-Poverty-Progress-Profile-2013-FINAL.pdf>.

33. See generally CUSHMAN AND WAKEFIELD & URIA MENÉNDEZ PROENÇA DE CARVALHO, *GUÍA DE INVESTIMENTO IMOBILIÁRIO EM PORTUGAL [GUIDE TO PROPERTY INVESTMENT IN PORTUGAL]* 35, 41, available at <http://www.portugalglobal.pt/PT/InvestirPortugal/Documents/GuidePropertyInvestmentPortugal.pdf> (last visited Mar. 11, 2014).

34. *Id.* at 47.

35. See generally Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding from Fernando Teixeira dos Santos, Minister of State and Finance, & Carlos da Silva Costa, Governor of Banco de Portugal, to Dominique Strauss-Kahn, Managing Dir., Int'l Monetary Fund (May 17, 2011), available at <https://www.imf.org/external/np/loi/2011/prt/051711.pdf>.

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the Portuguese housing market because if investor demand to purchase apartments for rent continues, then urban regeneration may also be a decisive factor to revive the economy.

E. SPAIN

Since mid-2008, the Spanish economy has been in a recession,³⁶ with GDP down 3.7 percent in 2009,³⁷ and negative or flat growth since then. The economy has been marked by (a) a decline in government spending following austerity measures and (b) a fall of private consumption driven by the falling incomes, increasing unemployment (25 percent in 2012), and a credit shortage.³⁸

The pop of the Spanish property “bubble” started in 2008 and the impact is still negatively affecting the market. Many real estate developers and construction companies have been declared bankrupt. The crisis has compromised the stability of the Spanish financial institutions that were highly exposed to the real estate risk. This led to a restructuring of the banking sector, the call for a bailout from the EU,³⁹ and the setting up of a “bad bank” to absorb the most troubled real estate assets owned by financial institutions.⁴⁰

Several laws have been enacted to encourage national and foreign investment in real estate by establishing new tax benefits. The most important personal income tax benefits concerning real estate are (a) the recovery of the tax allowance for acquisitions, (b) the extension of the tax allowance for specific refurbishment works, and (c) the partial tax exemption on the transfer of real estate between May 11, 2012, and December 31, 2012.⁴¹ Furthermore, the government established a temporary reduction of Value Added Tax (VAT) to 4 percent for the purchase of residential properties.⁴²

But the tax benefits intended to help Spanish banks reduce their stock of housing have been insufficient, due to the credit shortage, the continued decline in prices, and the decrease in the number of inhabitants (from reduced immigration, increased emigration, and declining birth rates), which reduces the demand for housing. Finally, the economic forecast in Spain is for a slow and difficult recovery despite the harsh corrective financial measures implemented by the government as part of the EU bailout.⁴³

36. See Paul Day, *Fragile Spanish Economy Limpes Out of Recession*, REUTERS (Oct. 30, 2013, 11:42 AM), <http://www.reuters.com/article/2013/10/30/us-spain-economy-idUSBRE99T0BH20131030>.

37. See *Spain*, FORBES (Dec. 2013), <http://www.forbes.com/places/spain/>.

38. See generally CUSHMAN AND WAKEFIELD & URÍA MENÉNDEZ PROENÇA DE CARVALHO, *supra* note 33.

39. See *Spain's Economic Outlook Improving, Says Moody's Ratings Agency*, BBC (Dec. 4, 2013, 6:50 PM), <http://www.bbc.co.uk/news/business-25226669>.

40. Miles Johnson, *Spain's 'Bad Bank' Sells First Real Estate Assets*, FIN. TIMES (Aug. 6, 2013, 10:06 PM), <http://www.ft.com/intl/cms/s/0/5e299a46-febe-11e2-b9b0-00144feabdc0.html#axzz2srybKtKe>.

41. See generally *Tax News Flash – Spain*, KPMG, <http://www.kpmg.com/global/en/issuesandinsights/articlespublications/taxnewsflash/pages/spain.aspx> (last visited Mar. 11, 2014).

42. *Spain: VAT Essentials*, KPMG, <http://www.kpmg.com/global/en/issuesandinsights/articlespublications/vat-gst-essentials/pages/spain.aspx> (last visited Mar. 11, 2014).

43. See STANDARD & POOR'S, *ECONOMIC RESEARCH: HOUSE PRICES ARE STILL FALLING IN MOST EUROPEAN MARKETS AS THE RECESSION BITES* (2013), available at http://www.standardandpoors.com/spf/upload/Ratings_EMEA/EuropeanhousingmarketsJuly2013.pdf.

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IV. Leisure and Residential Real Estate Developments in Selected Jurisdictions

A. BRAZIL

The tourism industry in Brazil is booming since the announcement that the country will host the 2014 FIFA World Cup⁴⁴ and the 2016 Olympic Games in Rio de Janeiro.⁴⁵ According to recent research published by BSH International and reports by the Ministry of Tourism, by 2016, 422 new hotels are expected, meaning more than 70,000 rooms, with an investment evaluated in approximately R\$12 billion.⁴⁶

The business model that is spotlighted in Brazil for private real estate investments for hotel products is the so-called “Condo-Hotel.”⁴⁷ The Condo-Hotel is a mix of real estate and hospitality models that has failed in the United States and other markets but is seen as a good opportunity in Brazil at the moment, due to high hotel occupancy levels throughout the country (70 percent national average in 2012)⁴⁸ and positive cash flow exceeding expectations.

But different from what happened in the past when investments in flats were booming in Brazil without much oversight, Brazilian authorities are now discussing whether Condo-Hotel offerings will be considered as a “security” as established in Article 2⁴⁹ of Law Number 6.385.⁵⁰ Because investors are attracted through public offerings, if these investments are considered a security, rules from the Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários or CVM) shall apply.⁵¹

Before investing in Brazilian Condo-Hotels, investors are advised to conduct thorough due diligence on the corporate structure and vehicle, entitlements, development plan, as well as the track record and reputation of the parties. Indeed, it is important to check whether the corporate structures designed for the project are adequate to accommodate the rights and obligations of all parties involved in the business, normally based on either

44. See *2014 FIFA World Cup Brazil*, FIFA, <http://www.fifa.com/worldcup/> (last visited Mar. 11, 2014).

45. See *Rio 2016*, <http://www.rio2016.com/en> (last visited Mar. 11, 2014).

46. See TRAVEL RESEARCH, BSH INT’L, *INVESTIMENTOS NO BRASIL: HOTÉIS & RESORTS-2011* [INVESTMENTS IN BRAZIL: HOTELS & RESORTS -2011] (May 2011), available at http://www.umconline.com.br/foco_emkt/11_2011_edicao4/relatorio_investimentos_no_brasil_2011.pdf.

47. The “Condo-Hotel” may be defined in Brazil as residential property that has been granted a special governmental authorization to be commercially exploited as a hotel. It is structured as a condominium in which several owners of independent units contract with a hotel operator to manage and exploit the asset as a business activity in return for preset revenues to the owners.

48. *Brazil’s Lodging Fundamentals Continue Upward Trajectory, Hotel Gross Operating Profits Hit a Historic High of 36.5 Percent of Total Revenue*, HOSPITALITYNET (Aug. 9, 2012), <http://www.hospitalitynet.org/news/154000320/4057229.html>; see FÓRUM DES OPERADORES HOTELEIROS DO BRASIL, <http://www.fohb.com.br/> (last visited Mar. 18, 2014).

49. “Article 2. The following securities shall be subject to the provisions of this law: . . . IX - when publicly offered, any other collective investment instrument or agreement that creates the right of participation on profits or remuneration, including as a result of the rendering of services, and whose profits derive from the efforts of the entrepreneur or from the efforts of third parties.” Lei No. 6.385, de 7 de Dezembro de 1976, as amended by Lei No. 10.303, de 31 de outubro de 2001, DIÁRIO OFICIAL DE UNIÃO [D.O.U.], available at http://www.cvm.gov.br/ingl/regu/regu_6385_revised.asp (Braz.).

50. *Id.*

51. See generally *The Commission, SECS. & EXCHANGE COMMISSION OF BRAZ.*, <http://www.cvm.gov.br/ingl/indexing.asp> (last visited Mar. 11, 2014).

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the formation of a corporate or non-corporate partnership, such as a Special Purpose Entity (SPE) or Special Purpose Company (SPC), or investment fund. In addition, due diligence on the project is advisable to ensure all the necessary authorizations, as well as the participants involved (including developer, operator, and brokers) are in place; a very professional analysis of the agreements is also advisable. Once you finish your homework, welcome to investing in Condo-Hotels in Brazil.

B. DOMINICAN REPUBLIC

Significant new zoning and tax legislation aimed at fostering tourism development in the Dominican Republic arrived in 2013. On July 22, 2013, the Chamber of Deputies of the Dominican Republic approved the Draft Bill amending Law No. 158-01 of Incentives for Tourism Development of the Dominican Republic⁵² to include non-exempt urban and oceanfront areas in Santo Domingo and Punta Cana, where certain qualified promoter and developers⁵³ may benefit from the vast tax exemptions regime provided under of Article 4 of Law 158-01.⁵⁴

The bill amends Article 1 of Law 158-01 to re-zone as high-rise and commercial the areas in Santo Domingo commonly known as the “Polígono Central,” the Colonial Zone, and other Caribbean waterfront areas considered important to the Tourism Industry. Among the considerations for the re-zone is the fact that the *Polígono Central* has not only become Santo Domingo’s business and financial hub, but is also slated to become one of

52. Ley No. 158-01 Sobre la Promoción del Desarrollo Turístico en Destinos Subdesarrollados y en Nuevos Destinos en Provincias y Localidades con Potencial Extraordinario, que Crea el Fondo Oficial para la Promoción del Turismo [for the Promotion of Tourism Development in Scarcely Developed Locations and New Tourist Sites in Provinces and Places of Great Potential, and the Establishment of an Official Tourist Promotion Fund], 9 de Octubre de 2001, *as amended* by Ley No. 184-02 Que Introduce Modificaciones a la Ley No. 158-01, de Fomento al Desarrollo de Nuevos polos Turísticos [Introduces Modifications to Law No. 158-01, for the Promotion of Development of New Tourist Poles], 23 de Noviembre de 2002 and Ley No. 318-04 Que Modifica el Párrafo III del Artículo 1 de Ley No. 158-01, Modificada por la Ley No. 184-02 [Modifies Paragraph III of Article 1 of Law No. 158-01, Modified by Law No. 184-02], 23 de Diciembre de 2004, *available at* http://www.sectur.gob.do/Portals/0/docs/Ley_158-01.pdf (Dom. Rep.).

53. Article 3 of Ley No. 158-01, as amended, provides that all enterprises that venture, promote, or invest capitals in designated tourism zones, for tourism activities such as hotels, resorts, cruises, conventions, congresses, festivals, shows, and concerts facilities, infrastructure for basic services, entertainment, bio and theme parks, port and maritime infrastructure, aquariums, restaurants, golf courses, sports facilities, villas, lots, apartments, mooring for vessels, and any other facility belonging to tourism activities, who have been approved by the Tourism Promotion Council (CONFOTUR), regulatory agency in charge of the application of Ley 158-01, may benefit from its incentives. *Id.*

54. As per Article 4 of Ley No. 158-01 for the Development of Tourism, those incentives consisted of a 100 percent tax exemption for a 10-year period applicable to the activities specified in Article 3 of said Law, of the following taxes: (i) income tax; (ii) national and municipal taxes applicable to the incorporation of commercial entities, for the transfer of real estate properties, for the sales, exchanges, capital contributions, and any other manner in which the real estate rights are transferred; (iii) the real estate ownership tax; (iv) the tariffs, rights, and quotas for the elaboration of the plans, studies, advisories, and supervision and the construction of the works of the tourism project; (v) import duties and other taxes, such as tariffs, fees, late charges, including the Tax on Transfer of Industrialized Goods and Services (ITBIS) that may apply to machineries, equipments, materials, and goods required for the first equipment and start of operations; (vi) withholding taxes on payments made for national and international funding given to such companies as are the subject of these incentives, as well as any interest thereon, are exempted from all taxes and withholdings; (vii) up to 20 percent income tax deduction, for a 5-year period, of the amounts invested within the scope of activities promoted according to said Ley 158-01. *Id.*

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the most urban tourism destinations in the Caribbean.⁵⁵ Indeed, the Ministry of Tourism Resolution 61/2011⁵⁶ is already applying the new zoning and land use provisions to hotel and resort development projects, large shopping malls and retail outlets that have been opening in the area as a result of the investment and business opportunities of this area and the expected tourism incentives this bill would provide.

On the taxation front, Article 33 of Tax Collection Efficiency Law 253-12, enacted on November 9, 2013,⁵⁷ eliminates the broad tax incentives⁵⁸ that were previously available⁵⁹ to parties directly investing with qualified promoters or developers of the tourism activities pursuant to Law 158-01, dated October 9, 2001, of Incentives for Tourism Development.⁶⁰ The reforms make such incentives for the development of tourism available only to the qualified promoter or developer entities and not the investors therein.

Following these reforms, the 1 percent annual property tax applicable to individuals was modified as follows (effective January 2013):

- The tax accrues as of January 1 of each year, with installments due on March 11 and September 11, regardless of any changes in ownership that may occur during the calendar year. Thus, both sellers and purchasers of real property should take into consideration and pro-rate the tax when planning their real estate transactions.⁶¹
- Although the general property tax exemption increased from roughly U.S. \$117,650 to U.S. \$152,950 (adjustable for inflation), previously, the exemption could be taken on each of the taxpayer's transactions in a calendar year. Now, however, the exemption is an aggregate annual number.⁶²
- Property taxes paid may be deducted from the individual's income tax.⁶³
- In fiscal year 2016, the real estate property tax will also be applicable to legal entities, instead of the 1 percent annual asset tax now in force. Under the sunset clause included in Article 48 of Law 253-12, the assets tax rate shall be reduced to 0.5 percent in the year 2015 and eliminated by 2016, provided certain collection goals are met.⁶⁴

55. *Id.*

56. Ministerio de Turismo Resolución 61/2011 [Ministry of Tourism Resolution 61/2011], RNC-401-03681-9, 25 de Octubre de 2011, *available at* http://dpp-sectur.gov.do/uploads/BASE_LEGAL/RESOLUCIONES/RES_2011_061.pdf (Dom. Rep.).

57. See Enrique De Marchena & Henry Pastrano, *Tax Reform and CONFOTUR - Dominican Republic*, CENT. L. (Dec. 14, 2012), http://www.central-law.com/_blog/Central_Law_Blog/post/Tax_Reform_and_CONFOTUR_-_Dominican_Republic/.

58. Ministerio de Turismo Resolución 61/2011, RNC-401-03681-9.

59. Foreign Investment Regulations and Incentives in the Dominican Republic, GUZMÁN ARIZA, <http://www.drlawyer.com/en/practice/foreign-investment/> (last visited Mar. 17, 2014) (According to Decree No.74-02 for the application of Law 158-01 of Incentives for Tourism Development).

60. Ley No. 158-01 of October 9, 2001 (Dom. Rep.).

61. *See id.*

62. *See id.*

63. *Id.* (Provided they have been incurred to obtain, maintain, or conserve taxable income according to Article 287 of the Tax Code); see Dominican Republic Regulations on Recent Tax Reform Enter in Force, EY (Mar. 8, 2013), <http://www.ey.com/GL/en/Services/Tax/International-Tax/Alert—Dominican-Republic-regulations-on-recent-tax-reform-enter-in-force>.

64. Ley No. 158-01 of October 9, 2001 (Dom. Rep.).

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The above measure should imply a strong relief for legal entities incurring losses or that may be subject to the payment of the minimum 1 percent assets tax, because they would not be subject to taxes over their non-real estate assets.

C. POLAND

In a ruling issued in November 2013, the Court of Appeals in Warsaw deemed legal a settlement between a developer and a neighbor of a construction site under which the developer undertook to pay to the neighbor 135,000 PLN in exchange for not appealing against the building permit the developer obtained. The case was brought by a developer who tried to annul the settlement and demanded return of the money paid to the neighbor, claiming that the payment should be regarded as undue.⁶⁵

The judges did not share the developer's views, holding that a neighbor had certain potential legal claims resulting from nuisance of a building process and was entitled to waive these claims in exchange for financial compensation from the developer. The developer on the other hand, as a professional business entity, should have taken into account the requirements of the administrative procedures connected with construction process and possibility that the administrative procedures might be prolonged by complaints of the individuals and entities neighboring with the construction site. As a result, the court dismissed the claims of the developer. The case is not over yet, as the developer has declared that it would file a writ to the Polish Highest Court, which has the discretion to accept the writ and hear the case or to deny it.

Polish real estate developers see the case as an important attempt to curb the problem of so called "development blackmail" which has become a common problem in Poland, attracting many specialized firms, often law firms, which search for big development sites and solicit neighbors who they will assist in filing formal complaints in accordance with administrative regulations or raising various claims against the developers. The firms then share with the neighbors any payments received from the developers in exchange for withdrawing these complaints or waiving the claims.

The legislature recognizes the problem faced by developers and is working on simplifying the administrative procedure regarding the construction process, but it will still take a few years before the law is changed. Consequently, the development blackmail looks like a challenge for the developers in the coming years, unless they manage to obtain court rulings that will help to stop or at least reduce this problem.

D. RUSSIA

The ongoing development of the Russian economy and Russia's increasing international economic cooperation continues to be noteworthy. Each year, Russia is becoming a more and more attractive destination for tourists and businessmen.⁶⁶ The 2014 Winter Olympics and the 2018 Football World Cup in Russia are symbols and accelerators for

65. Sad Apelacyjny w Lodzi I Wydział Cywilny [Court of Appeal Civil Division of Lodz] Apr. 26, 2013, Sygn. Akt I ACa 1449/12 (Pol.) *available at* [http://orzeczenia.lodz.sa.gov.pl/content/\\$N/15250000000503_I_ACa_001449_2012_Uz_2013-04-26_001](http://orzeczenia.lodz.sa.gov.pl/content/$N/15250000000503_I_ACa_001449_2012_Uz_2013-04-26_001).

66. See generally *Country Report: Travel and Tourism in Russia*, EUROMONITOR INT'L (Nov. 2013), <http://www.euromonitor.com/travel-and-tourism-in-russia/report>.

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further development in recreational real estate, hospitality, travel, and related market segments.

In 2013, the Russian government approved the National Federation Program for Culture and Tourism Development for years 2013–2020,⁶⁷ which has spurred investment by Russians in recreational real estate both in and outside Russia, with the particular goal of supporting the hospitality and tourism industry as well as creating an investment climate in Russian to attract more investors. Despite this program, Russia lacks a systematic or sufficiently advanced land-planning and development regulatory framework to develop and build new attractive leisure and tourism projects. The existing chaotic building-up and splitting into many small and privately-owned land plots in most areas attractive for tourist and hospitality development throughout Russia has hindered investment and development of otherwise prime locations.⁶⁸

E. SWEDEN

In light of recent EU case law, investments in Swedish apartment-hotels have become more attractive. Under Swedish tax law, legislative act 1994:200 on VAT (the VAT Act),⁶⁹ deductions for input VAT shall be reversed, through a subsequent adjustment, by any changes of the business, meaning that should the VAT liability end due to a sale, the adjustment shall be made by the new owner.

This change in the law has resulted in the VAT related to real estate investments made in a property with the intended use of so called “short-term living” (which is subject to VAT) being repaid by the purchaser of the same property if the actual use following the acquisition changes to so called “long-term living” (which is not subject to VAT).

In turn, the market has seen an increased interest in apartment-hotels, also known as Stay-at Hotels, offering hotel guests convenient apartments for long-term stay, instead of normal hotel rooms suitable for shorter periods. To avoid being subject to the complex residential tenancy regulations, apartment-hotels must meet certain minimum hotels standards, such as a reception desk and other normal hotel facilities. But even if these criteria are met, the VAT situation is an even larger problem for investors with interest in such apartment-hotels because it hinders the guest from staying at the hotel for a longer period of time, or long-term living. Due to recent EU case law C-622/11, *Staatssecretaris van Financiën vs Pactor Vastgoed BV*, the VAT situation in Sweden may, however, need to be amended. Such amendment may thereby facilitate investments in apartment-hotels in Sweden.

Taxpayers who have paid VAT on the investments made to their properties are eligible for a VAT rebate, assuming the property is subject to VAT.⁷⁰ If, however, the use of the

67. Ukazy: Razvitie Kultury i Turizma [Executive Order: The Development of Culture and Tourism], SOBRANIE ZAKONODATEL'STVA ROSSIYSKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2013, No. 2, Item 2567 (Russ.).

68. Preparation of the Sochi city hospitality industry for the purposes of providing accommodation and other services to the participants and guests of the XXII Winter Olympic and XI Paralympic Games was prioritized in the Program.

69. 8a ch. MERVARDESSKATTELAG (SFS 1994:200) (Swed.).

70. LENNART LARSSON & ANDREAS STRANNE, ADVOKATFIRMAN VINGE KB, SWEDEN TAX DESKBOOK 4–5, 15 (John R. Barsanti ed., 2006), available at <http://www.lexmundi.com/images/lexmundi/pdf/intltax-sweden.pdf>.

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property is changed to a use that is not subject to VAT, the VAT shall be adjusted and repaid to the tax authority. For example, if the premises were originally zoned for office use but are later used for residential living, or if the premises are suddenly used by a tenant whose business is not subject to VAT, such as a school, any deducted VAT must be repaid to the authority.⁷¹

When transferring a property in Sweden, the rights and obligations attributable to the adjustment of VAT are transferred to the buyer as a consequence of the transaction.⁷² This means that the buyer is obliged to repay VAT that has been deducted by the former owner, if the use of the property following the acquisition is amended or used by a tenant not subject to VAT.

In the apartment-hotel business perspective described above, this means that one who buys an office building with the aim of using it as an apartment-hotel building may either implement restrictions regarding how long a tenant may stay at the hotel in order to avoid the long-term living, or risk being obliged to repay VAT deducted by the former owner of the property related to the former owner's investments.

In C-622/11,⁷³ the court ruled that only the entity that purchased the property, performed the investment, and, hence, claimed repayment of VAT, is obligated to repay the deducted VAT to the tax authority. The obligation is non-transferrable to a future buyer of the property. Consequently, the Swedish regulations that obligate the purchaser of a real estate to assume the previous owner's liabilities in relation to the tax authorities most likely contradicts EU law.

With regard to the hotel business in Sweden, the case C-622/11 may bring the result that an investor who purchases an office building in order to turn it into an apartment hotel for long-term stay no longer, from a tax perspective, bears the same risk to be obliged to repay tax deductions made by the previous owner. As this has been an obvious obstacle when discussing similar investments in Sweden, we will probably see more of such investments in the near future. It is also possible that a buyer of real estate who has already made the adjustments and repaid input VAT is now in a position where he could consider requesting a reassessment regarding such repayment based on recent case law. But it should be stressed that the VAT legislation has not yet been amended, and it is not possible today to say how any amendments will be formalized. Furthermore, the business of long-term stay hotels also faces other hindrances set up by restrictive tenancy laws and the Swedish Construction Act, but with the proper legal representatives, any such hindrances are of course possible to circumvent.

F. UKRAINE

The boom in tourism and hospitality infrastructure development in the Ukraine was caused by the football championship UEFA EURO 2012. An increase in the number of tourists and emergence of new international hotels indicate that a high-quality tourism product is shaping up. Notably, the Ukrainian hospitality market became attractive for international chains; according to the "Globe Spot," Ukraine was named one of the Top

71. 8a ch. MERVÄRDESKATTELAG (Swed.).

72. *Id.* § 11.

73. Case C-622/11, Staatssecretaris van Financiën v. Pactar Vastgoed BV, OJ C 73, (2012).

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10 destinations for 2013 to be visited.⁷⁴ Other key factors of hospitality market development were the growth of business activity in Ukraine and emergence of number of high-quality hotels. The year 2013 saw many ambitious plans for Ukraine.

To boost the development of tourism industry, the Ukrainian government is drafting a special targeted program outlining policy and budgetary priorities to develop and finance industry growth through 2022. The Program will be based on a public-private partnership model for tourism infrastructure development. The government engaged the experts from EU and local Ukrainian industry experts to bring the best practices and follow a practical approach. The following proposals are expected to be implemented in the State Targeted Program and then introduced in new legislation:⁷⁵

- a) To introduce mandatory categorization (assessment) of hotel services;⁷⁶
- b) To introduce penalties for noncompliance with the mandatory categorization requirements (once the grace period expires);
- c) To introduce penalties for providing customers with misleading information on hotel services;
- d) To introduce an annual assessment of hotel services on their compliance with the alleged category (level), which should motivate the hotels to maintain their material and technical facilities;
- e) To introduce new criteria of categorization based on the European best practices, such as the standards elaborated by the Hotelstars Union;
- f) To abolish restrictions on designated purpose of funds for application tax benefits by three-star, four-star, and five-star hotels. Currently under effective tax laws of Ukraine, these hotels are subject to tax incentives, provided that the tax-exempted revenue is used either for the improvement of material and technical facilities of the hotel, introduction of new technologies to the hotel, or repayment of loan and interest granted for the hotel construction.
- g) To introduce tax incentives for one-star and two-star hotels.

74. See *Top Ten Destinations for 2013*, GLOBE SPOTS, <http://www.globespots.com/besttravel.php?year=2013> (last visited Mar. 18, 2014).

75. See *Pro Shvalennya Kontseptsii Derzhavno Tslyovo Programi Rozvitku Turizmu ta Kurortv na Period do 2022 Roku* [On approval of the Concept of the State Program of Development of Tourism and Resorts in the Period to 2022], Document 638-2013-r, Aug. 1, 2013, available at <http://zakon2.rada.gov.ua/laws/show/638-2013-%D1%80>.

76. The categorization, being a state regulatory measure, will define the level of hotel services according to the uniform criteria. Currently the level of hotel services is defined by the hotels themselves and is not assessed by the state or any other independent appraiser, which leads to abusive practice on the market. *Id.*